IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

FAO.No. 94 of 2007()
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AGAINST THE ORDER DATED 28/06/2006 IN IA. 1328 /2005 IN OS.41/2002 of SUB COURT, PALA

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: APPELLANT/PETITIONER/DEFENDANT

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MANUEL GEORGE, AGED 49 YEARS,
S/O.GEORGE, VELLOOKUNNEL HOUSE,
KONDOOR VILLAGE.

BY ADV. SRI.GEORGE MATHEW

RESPONDENTS: PLAINTIFF

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JOHN.V.VARGHESE,
VETTUVELIL KOLLATTU HOUSE,
PANACHIKKADU.

BY

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.1035/2007

DISMISSED

18/7/2007 SD/- KURIAN JOSEPH, JUDGE.

SD/- T.R. RAMACHANDRAN NAIR, JUDGE.

// TRUE COPY //

P.S. TO JUDGE

**Kurian Joseph & T.R. Ramachandran Nair, JJ.**

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**F.A.O.NO.94 OF 2007**

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**Dated this the 18th day of July, 2007**

**JUDGMENT**

**T.R.Ramachandran Nair, J.**

The appellant is the defendant in O.S. No.41/2002 on the file of the Subordinate Judge's Court, Palai. The suit was for realisation of money which was decreed ex-parte. This appeal is filed against the order dated 28.6.21006 in I.A.No.1328/2005. According to the appellant, in the suit no summons was served, but he was set ex-parte. It is stated that he had been residing in Uttamapalayam in Madurai District in Tamil Nadu and there he fell ill and he could not travel back. I.A. No.1329/2005 is one filed for setting aside the ex-parte decree and I.A. No.1328/2005 is for condoning the delay in filing that petition. On 28.6.2006 the application for condoning the delay was dismissed due to the non-appearance of the appellant. No separate order has been passed in I.A. No.1329/2005. Again he filed another petition as I.A.No.1686/2006 for reviewing the order in I.A. Nos.1328/2005 and 1329/2005 and the same has also been dismissed by order dated 30.11.2006.

2. According to the appellant, he was also an accused in C.C.

No.114/2000 on the file of the Chief Judicial Magistrate's Court, Kottayam and both the civil and criminal cases are based on one and the same cheque. He was convicted in the criminal case which was challenged in Crl.R.P.No.402/2003. This court disposed of the Criminal Revision Petition by modifying the sentence after upholding the conviction. There was a further direction to the appellant to pay a fine of Rs.2,32,000/- before the Chief Judicial Magistrate's Court on or before 30.11.2006. According to him, he has remitted an amount of Rs.2,12,000/- as per cheque and an additional amount of Rs.20,000/- has been deposited before the Chief Judicial Magistrate's Court, Kottayam.

3. Even though in this appeal notice was ordered to the respondent, it was returned as not known. As per order in I.A.No.1695/2007, notice was directed to be served to the counsel appearing for the respondent before the court below. Learned counsel for the appellant submitted that the counsel appearing before the court below refused to accept notice despite the order in the above I.A. This court had granted an interim order for a period of one month, on 11.6.2007. When the matter came up for hearing today, there was no appearance for the respondent.

4. Heard learned counsel for the appellant.

5. Admittedly, an ex-parte decree had been passed against the

appellant. The order in I.A.No.1328/2005 dated 28.6.2006 is one dismissing the same for default. It is stated that no orders have been passed in I.A. No.1329/2005 for setting aside the ex-parte decree. In the interest of justice, we find that the appellant has to be given a further chance to contest the matter, in the peculiar facts and circumstances of the case.

6. Therefore, the impugned order in I.A. No.1328/2005 is hereby set aside. I.A. No.1328/2005 in O.S. No.41/2002 is hereby restored to file. The court below is directed to dispose of I.A.Nos.1328/2005 and 1329/2005 on their merits after hearing parties, as expeditiously as possible. Till then, the interim order passed by this court in this appeal will continue.

The appeal is disposed of in the above terms. No costs.

**(Kurian Joseph, Judge.)**

**(T.R. Ramachandran Nair, Judge.)**

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